

AO 120 (Rev. 08/10)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court Eastern District of Texas on the following

☐ Trademarks or ☒ Patents. (☒ the patent action involves 35 U.S.C. § 292.):

DOCKET NO. 2:11-cv-02761-ODW		DATE FILED 3/31/2011	U.S. DISTRICT COURT Eastern District of Texas
PLAINTIFF GHJ Holdings, LLC		DEFENDANT WMS GAMING, INC, a Delaware corporation	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1 5,401,024	3/28/1995	WMS Gaming, Inc. (Chicago, IL)	
2 D464,377	10/15/2002	WMS Gaming, Inc. (Waukegan, IL)	
3 D459,402	6/25/2002	WMS Gaming, Inc. (Waukegan, IL)	
4 D495,755	9/7/2004	WMS Gaming, Inc. (Waukegan, IL)	
5 D495,754	9/7/2004	WMS Gaming, Inc. (Waukegan, IL)	

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

1 patent information. Indeed, Defendant updated the marking of its manufacturing date, as shown
2 above, but decided to continue to mark the Inapplicable Patents. Further, the sheer number of
3 Inapplicable Patents that Defendant marked on its products (as described above), combined with
4 the other facts herein, allow a reasonable inference that Defendant knew the patents were
5 inapplicable when it marked the Falsely Marked Products.

6
7 12. It was a false statement for Defendant to mark the Falsely Marked Products with
8 inapplicable patents. Defendant knew that the patents were inapplicable, but nevertheless marked
9 them on its products when they were clearly inapplicable in an attempt to deceive the public.

10 13. Defendant is a large, sophisticated company that regularly enforces its patents and that
11 regularly reviews its patent portfolio (in light of the importance of such intellectual property in the
12 gaming industry). Defendant has, and/or regularly retains, sophisticated legal counsel. Defendant
13 has many years of experience applying for patents, obtaining patents, licensing patents, and/or
14 litigating in patent infringement lawsuits. Indeed, the United States Patent and Trademark Office's
15 website shows Defendant to be the assignee to 754 patents and patent applications. Further,
16 Defendant has been a party to six patent related cases, in which Defendant was plaintiff at least
17 three times asserting claims for patent infringement. The patents that Defendant owns or has
18 licensed, including the Inapplicable Patents, were or are important assets to Defendant and are
19 consistently reviewed and monitored in the course of Defendant's business.

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22 14. The applicability of a U.S. Patent is not readily ascertainable by members of the public at
23 the time of the product purchase. The patent number itself does not provide members of the public
24 with information on what the patent covers. Basic information about a patent, such as the filing,
25 issue and priority dates associated with a particular U.S. patent number are available at, for
26 example, the website of the United States Patent and Trademark Office ("USPTO"). However,
27 access to the Internet is necessary to retrieve that information (meaning that a consumer may not
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1 have the ability to retrieve the information, especially while he is in a store making a purchasing
2 decision). Rather, a member of the public must also conduct a burdensome legal analysis,
3 requiring specific knowledge of U.S. Patent laws regarding coverage.

4 15. Defendant knew that it was a false statement to mark the Falsely Marked Products with an
5 inapplicable patent.

6
7 16. Defendant did not have, and could not have had, a reasonable belief that its products were
8 properly marked, and Defendant knew that the aforementioned patents were inapplicable.

9 **INJURY IN FACT TO THE UNITED STATES**

10 17. Defendant's practice of false marking is injurious to the United States.

11 18. The false marking alleged above caused injuries to the sovereignty of the United States
12 arising from Defendant's violations of federal law, specifically, the violation of 35 U.S.C. §292(a).
13 The United States has conferred standing on "any person," which includes Relator, as the United
14 States' assignee of the claims in this complaint to enforce section 292.
15

16 19. The false marking alleged above caused proprietary injuries to the United States, which,
17 together with section 292, would provide another basis to confer standing on Relator as the United
18 States' assignee.

19 20. The marking and false marking statutes exist to give the public notice of patent rights.
20 Congress intended the public to rely on marking as a ready means of discerning the status of
21 intellectual property embodied in an article of manufacture or design, such as the Falsely Marked
22 Products.
23

24 21. Federal patent policy recognizes an important public interest in permitting full and free
25 competition in the use of ideas that are, in reality, a part of the public domain—such as those
26 described in the Inapplicable Patents.
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1 22. Congress' interest in preventing false marking was so great that it enacted a statute that
2 sought to encourage private parties to enforce the statute. By permitting members of the public to
3 bring *qui tam* suits on behalf of the government, Congress authorized private persons like Relator
4 to help control false marking.

5 23. The acts of false marking alleged above deter innovation and stifle competition in the
6 marketplace for at least the following reasons: if an article that is within the public domain is
7 falsely marked, potential competitors may be dissuaded from entering the same market; false marks
8 may also deter scientific research when an inventor sees a mark and decides to forego continued
9 research to avoid possible infringement; and false marking can cause unnecessary investment in
10 design around or costs incurred to analyze the validity or enforceability of a patent whose number
11 has been marked upon a product with which a competitor would like to compete.

12 24. The false marking alleged above misleads the public into believing that the Inapplicable
13 Patents give Defendant control of the Falsely Marked Products (as well as like products), placing
14 the risk of determining whether the Falsely Marked Products are controlled by such patents on the
15 public, thereby increasing the cost to the public of ascertaining who, if anyone, in fact controls the
16 intellectual property embodied in the Falsely Marked Products.

17 25. Thus, in each instance where a representation is made that the Falsely Marked Products are
18 protected by the Inapplicable Patents, a member of the public desiring to participate in the market
19 for products like the Falsely Marked Products must incur the cost of determining whether the
20 involved patents are valid and enforceable. Failure to take on the costs of a reasonably competent
21 search for information necessary to interpret each patent, investigation into prior art and other
22 information bearing on the quality of the patents, and analysis thereof can result in a finding of
23 willful infringement, which may treble the damages an infringer would otherwise have to pay.
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1 26. The false marking alleged in this case also creates a misleading impression that the Falsely
2 Marked Products are technologically superior to previously available products, as articles bearing
3 the term "patent" may be presumed to be novel, useful, and innovative.

4 27. Every person or company in the United States is a potential entrepreneur with respect to the
5 process, machine, manufacture, or composition of matter described in the Inapplicable Patents.
6 Moreover, every person or company in the United States is a potential competitor with respect to
7 the Falsely Marked Products marked with the Inapplicable Patents.
8

9 28. Each Falsely Marked Product or advertisement thereof, because it is marked with or
10 displays the Inapplicable Patents, is likely to, or at least has the potential to, discourage or deter
11 each person or company (itself or by its representatives), which views such marking from
12 commercializing a competing product, even though the Inapplicable Patents do nothing to prevent
13 any person or company in the United States from competing in commercializing such products.
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15 29. The false marking alleged in this case and/or advertising thereof has quelled competition
16 with respect to similar products to an immeasurable extent, thereby causing harm to the United
17 States in an amount that cannot be readily determined.

18 30. The false marking alleged in this case constitutes wrongful and illegal advertisement of a
19 patent monopoly that does not exist and, as a result, has resulted in increasing, or at least
20 maintaining, the market power or commercial success with respect to the Falsely Marked Products.
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22 31. Each individual false marking (including each time an advertisement with such marking is
23 accessed on the Internet) is likely to harm, or at least potentially harms, the public. Thus, each such
24 false marking is a separate offense under 35 U.S.C. §292(a).

25 32. Each offense of false marking creates a proprietary interest of the United States in the
26 penalty that may be recovered under 35 U.S.C. §292(b).
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1 33. For at least the reasons stated in paragraphs 2 to 32 above, the false marking alleged in this
2 case caused injuries to the sovereignty of the United States arising from violations of federal law
3 and has caused proprietary injuries to the United States.

4 **CLAIM**

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6 34. For the reasons stated in paragraphs 2 to 33 above, Defendant has violated section 292 of
7 the Patent Act by falsely marking the Falsely Marked Products with intent to deceive the public.

8 **PRAYER FOR RELIEF**

9 35. Relator thus requests this Court, pursuant to 35 U.S.C. §292, to do the following:

10 A. enter a judgment against Defendant and in favor of Relator that Defendant
11 has violated 35 U.S.C. §292 by falsely marking products with knowledge that the
12 patent has expired and/or are not applicable for the purpose of deceiving the public;

13 B. order Defendant to pay a civil monetary fine of \$500 per false marking
14 offense, or an alternative reasonable amount determined by the Court taking into
15 consideration the total revenue and gross profit derived from the sale of falsely
16 marked products and the degree of intent to falsely mark the products, one-half of
17 which shall be paid to the United States and the other half to Relator;

18 C. enter a judgment declaring that this case is "exceptional," under 35 U.S.C.
19 §285 and award in favor of Relator, and against Defendant, the costs incurred by
20 Relator in bringing and maintaining this action, including reasonable attorneys' fees;

21 D. order that Defendant, its officers, agents, servants, employees, contractors,
22 suppliers, and attorneys be enjoined from committing new acts of false patent
23 marking and be required to cease all existing acts of false patent marking within 90
24 days; and
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1 E. grant Relator such other and further relief as the Court may deem just and
2 equitable.

3 JURY DEMAND

4 36. Relator demands a jury trial on all issues so triable.
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7 Respectfully submitted, this the 31st day of March, 2011.

8 GARTEISER LAW GROUP, P.C.

9
10 By 
11 Randall T. Garteiser
12 Attorneys for the Relator
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Otis D. Wright II and the assigned discovery Magistrate Judge is Suzanne H. Segal.

The case number on all documents filed with the Court should read as follows:

CV11- 2761 ODW (SSx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

GHJ HOLDINGS, LLC, a Texas
Limited Liability Company
Plaintiff

v.

WMS GAMING, INC., a Delaware corporation

Defendant

Civil Action No.

CV11-2761 ODW (SSX)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CT Corporation Systems
818 W. 7th St.
Los Angeles, CA 90017

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

GARTEISER LAW GROUP, P.C.
Randall T. Gartelser (Cal. Bar # 231821)
Christopher A. Honea (Cal. Bar # 232473)
44 North San Pedro Road
San Rafael, California 94903
[Tel.] (415)785-3762

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: MAR 30 2011

SHEA BOURGEOIS

Signature of Clerk or Deputy Clerk

SEAL

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

BY FAX

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) GHJ Holdings, LLC	DEFENDANTS WMS Gaming, Inc., a Delaware Corporation
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Randall T. Gertelser (SBN 231821) Gertelser Law Group, P.C.; 44 N. San Pedro Road San Rafael, CA 94903. Tel: 415-785-3762	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:33%;">PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:33%;">PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6										

IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check "Yes" only if demanded in complaint.) CLASS ACTION under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$
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VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

VII. NATURE OF SUIT (Place an X in one box only.) <table style="width:100%; border: none;"> <tr> <td style="width:25%; vertical-align: top;"> OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Consumer Challenge 12 USC 3210 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes </td> <td style="width:25%; vertical-align: top;"> CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. 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OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Consumer Challenge 12 USC 3210 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 363 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage-Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations Welfare <input type="checkbox"/> 444 American with Disabilities - Employment <input type="checkbox"/> 445 American with Disabilities - Other <input type="checkbox"/> 446 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 520 Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 531 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patents <input type="checkbox"/> 840 Trademark SECURITY <input type="checkbox"/> 861 HIA (1395D) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSJ (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	

FOR OFFICE USE ONLY: Case Number: CV11-2761

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

AO 120 (Rev. 08/10)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Eastern District of Texas on the following

☐ Trademarks or ☒ Patents. (☒ the patent action involves 35 U.S.C. § 292.):

DOCKET NO. 2:11-cv-02761-ODW		DATE FILED 3/31/2011	U.S. DISTRICT COURT Eastern District of Texas
PLAINTIFF GHJ Holdings, LLC		DEFENDANT WMS GAMING, INC, a Delaware corporation	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1 D509,254	9/6/2005	WMS Gaming, Inc. (Waukegan, IL)	
2 D512,105	11/29/2005	WMS Gaming, Inc. (Waukegan, IL)	
3 D559,328	1/8/2008	WMS Gaming, Inc. (Waukegan, IL)	
4			
5			

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETVIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Bowie County, TX

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Cook County, IL

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER): R. G. Baker Date 3/31/2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

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9 chris.honea@glgnow.com

10 **Attorneys for Relator GHJ Holdings, LLC**

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT COURT OF CALIFORNIA**

13 **GHJ HOLDINGS, LLC, a Texas limited liability**
14 **company,**

15 **Relator,**

16 **v.**

17 **WMS GAMING, INC., a Delaware**
18 **corporation,**

19 **Defendant.**

20 **CASE NO.**

21 **CV11-2761 ODW(SSX)**
22 **Assigned to Hon.**

23 **ORIGINAL COMPLAINT FOR FALSE**
24 **PATENT MARKING**

25 **[Jury Trial Demanded]**

26 **TRIAL DATE:**

27 **BY FAX**
28

FILED
2011 MAR 31 PM 4:30
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT
LOS ANGELES, CALIF.

1 Relator GHJ Holdings, LLC ("Relator") alleges as follows:

2 **NATURE OF THE CASE**

3 1. This is an action for false patent marking under section 292 of the Patent Act (35 U.S.C.
4 §292), which provides that any person may sue to recover the civil penalty for false patent marking.
5 Relator brings this *qui tam* action on behalf of the United States of America.

6 **PARTIES**

7
8 2. Relator is a Texas limited liability company with its principal place of business in
9 Texarkana, Texas.

10 3. Upon information and belief, WMS Gaming, Inc. is a corporation organized and existing
11 under the laws of the State of Delaware. Upon information and belief, WMS Gaming, Inc. has its
12 principal place of business at 800 South Northpoint Blvd., Waukegan, IL 60085 and can be served
13 via its registered agent for service of process: National Registered Agents, Inc., 200 West Adams
14 Street, Chicago, IL 60606.
15

16 **JURISDICTION AND VENUE**

17 4. This Court has subject matter jurisdiction over Relator's false marking claims under Title
18 28 U.S.C. §§1331 and 1338(a).

19 5. This Court has personal jurisdiction over Defendant by virtue of, *inter alia*, Defendant's
20 persistent and continuous contacts with the Central District of California, including active and
21 regular conduct of business during the relevant time period through its sales in the Central District
22 of California.
23

24 6. This Court has personal jurisdiction over Defendant because, *inter alia*, Defendant has
25 violated Title 35 U.S.C. §292, and falsely marked, advertised, distributed and sold products in the
26 Central District of California. Further, on information and belief, Defendant has sold falsely
27
28

1 marked products in competition with sellers of competitive products in the Central District of
2 California. Such sales by Defendant are substantial, continuous and systematic.

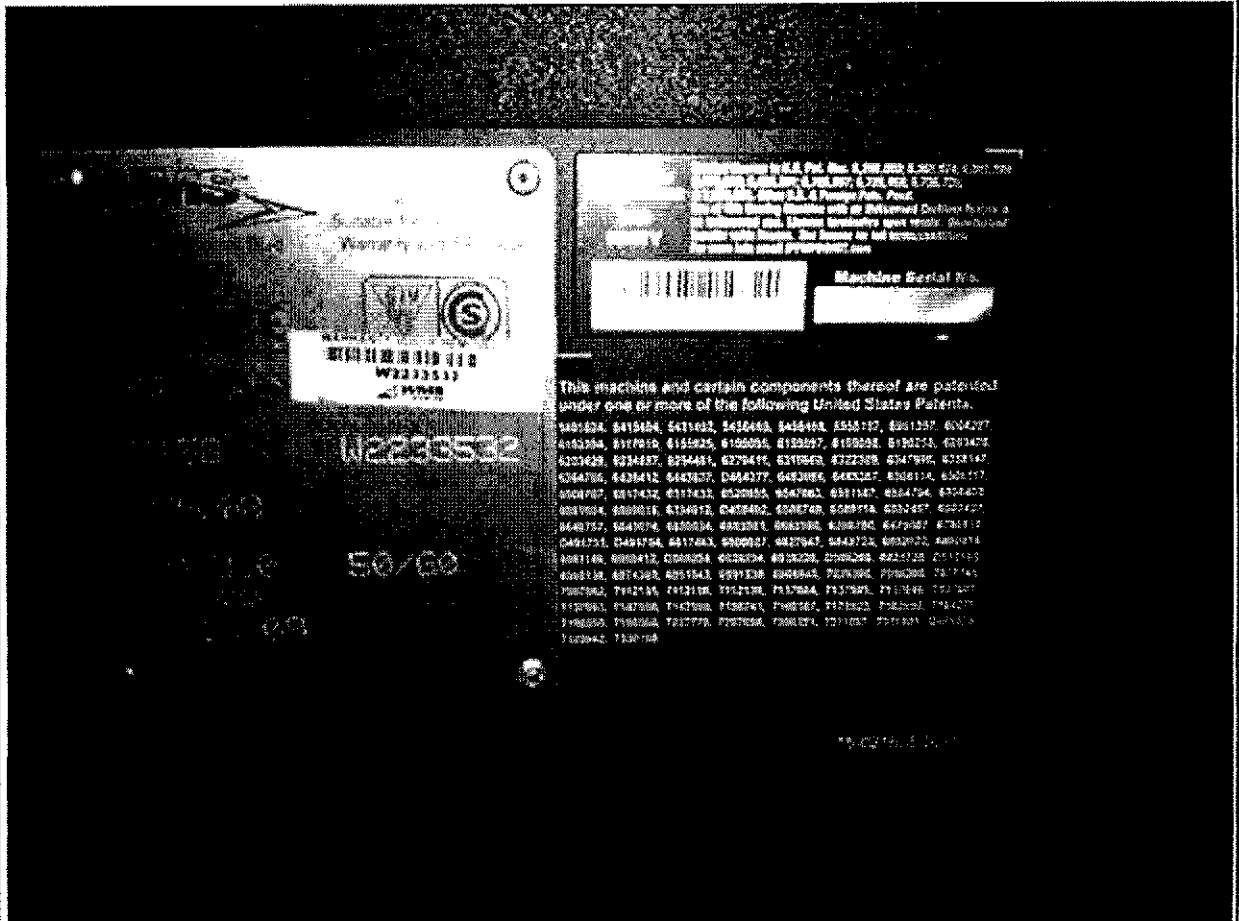
3 7. Venue is proper in this District under Title 28 U.S.C. §§1391(b) and (c) and 1395(a).

4 **FACTS**

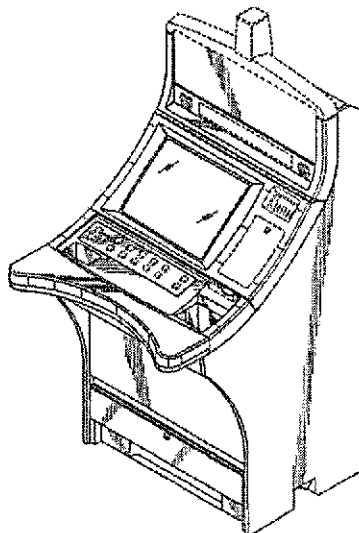
5
6 8. Defendant has marked and/or continues to mark its products, including, but not limited to,
7 its gaming machines (collectively, the "Falsely Marked Products") with inapplicable patents,
8 including at least U.S. Patent Nos. 5,401,024; D464,377; D459,402; D495,755; D495,754;
9 D509,254; D512,105; and D559,328 (the "Inapplicable Patents").

10 9. Such false marking by Defendant includes marking the Inapplicable Patents upon, affixing
11 the Inapplicable Patents to, and/or using the Inapplicable Patents in advertising in connection with
12 the Falsely Marked Products.

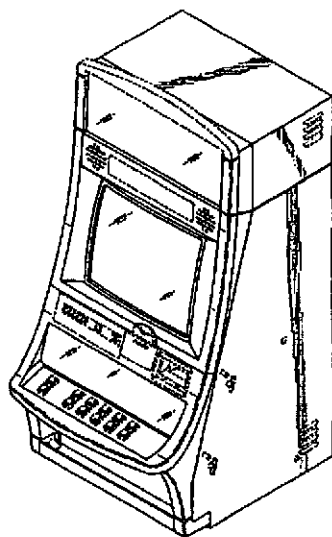
13
14 10. As the photo shows below, Defendant has also falsely marked and/or continues to falsely
15 mark the Falsely Marked Products with the intent to deceive by marking them with the "laundry
16 list" of Defendant's patents that are inapplicable to the Falsely Marked Products, including, but not
17 limited to Inapplicable Patents.



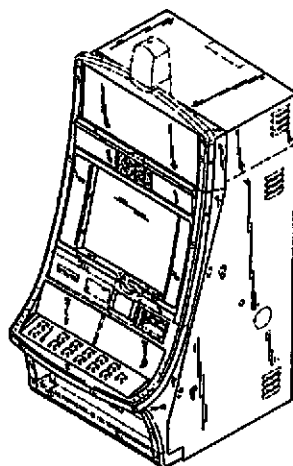
U.S. Patent No. 5,401,024 covers a "Keno Type Video Gaming Device." The other Inapplicable Patents cover the following designs respectively:



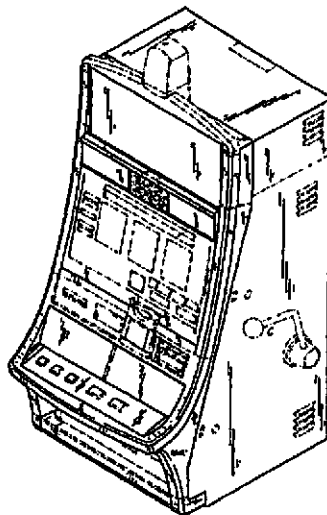
U.S. Patent No. D464,377



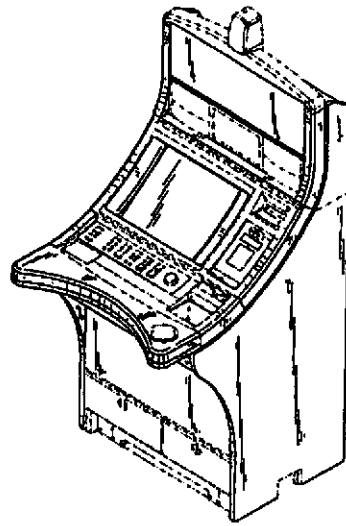
9 U.S. Patent No. D459,402



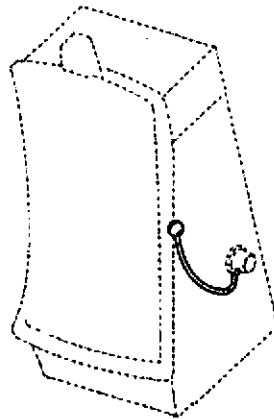
17 U.S. Patent No. D495,755



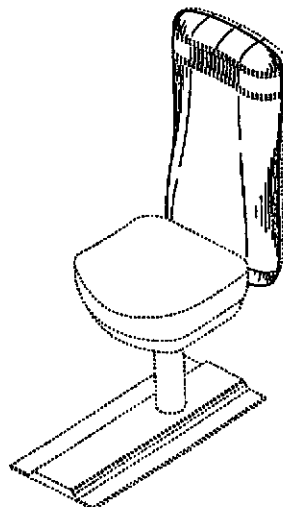
27 U.S. Patent No. D495,754



U.S. Patent No. D509,254



U.S. Patent No. D512,105



U.S. Patent No. D559,328

1 As can be seen in the "Hot Hot Super Jackpot Multi Game" game below (and as only one example
2 of the Falsely Marked Products) it is not a keno type gaming device as U.S. Patent No. 5,401,024
3 covers and the other Inapplicable Patents are also clearly inapplicable, providing a clear indication
4 that Defendant knew its patent markings were false.
5



27 11. Defendant has marked the Falsely Marked Products by printing the Inapplicable Patents on
28 the Falsely Marked Products. Such markings could have easily been updated to reflect accurate